

JUL - 6 2010

TONY R. MOORE, CLERK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

DAYAN ENRIQUE GARCIA
LA. DOC #505873

CIVIL ACTION NO. 09-1956

VS.

SECTION P

STATE OF LOUISIANA

JUDGE MINALDI
MAGISTRATE JUDGE KAY

JUDGMENT

There being no objection to the proposed findings of fact and conclusions of law in the Report and Recommendation of the Magistrate Judge previously filed herein these findings and conclusions are accepted. Alternatively, this court concludes that the proposed findings and conclusions are entirely correct. Accordingly, it is


IT IS ORDERED that plaintiff's civil rights complaint, be **DISMISSED WITH PREJUDICE** as frivolous, for failing to state a claim for which relief may be granted and for seeking monetary relief against a defendant who is immune from suit;

IT IS ALSO ORDERED that plaintiff's civil rights complaint, insofar as it seeks dismissal of the state proceeding and plaintiff's release from custody be construed as a petition for habeas corpus and that such claims be **DISMISSED WITHOUT PREJUDICE** for failure to exhaust available state court remedies;

IT IS FURTHER ORDERED that plaintiff's civil rights complaint, insofar as it alleges false arrest and imprisonment be **DISMISSED WITH PREJUDICE** (to their being asserted again when the *Heck v. Humphrey* conditions are met) as frivolous and for failing to state a claim on which relief may be granted pursuant to the provisions of 28 U.S.C. § 1915(e)(2); and

IT IS FINALLY ORDERED that all other civil rights claims alleged by plaintiff be **DISMISSED WITH PREJUDICE** as frivolous and for failing to state a claim on which relief may be granted in accordance with the provisions of 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).

THUS DONE AND SIGNED, in chambers, in Lake Charles, Louisiana, on this 6
day of July, 2010.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE